



5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 206, 215, 234, and 235

[Docket DARS-2018-0053]

RIN 0750-AJ83

**Defense Federal Acquisition Regulation Supplement: Amendments
Related to General Solicitations (DFARS Case 2018-D021)**

AGENCY: Defense Acquisition Regulations System, Department of
Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal
Acquisition Regulation Supplement (DFARS) to implement sections
of the National Defense Authorization Act for Fiscal Year 2018
by expanding the definition of other competitive procedures, and
extending the term and increasing the dollar value under the
contract authority for advanced development of initial or
additional prototype units.

DATES: Comments on the proposed rule should be submitted in
writing to the address shown below on or before **[Insert date 60
days after date of publication in the FEDERAL REGISTER]**, to be
considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2018-D021,
using any of the following methods:

o Federal eRulemaking Portal: <http://www.regulations.gov>. Search for "DFARS Case 2018-D021." Select "Comment Now" and follow the instructions provided to submit a comment. Please include "DFARS Case 2018-D021" on any attached documents.

Email: osd.dfars@mail.mil. Include DFARS Case 2018-D021 in the subject line of the message.

o Fax: 571-372-6094.

o Mail: Defense Acquisition Regulations System, Attn: Ms. Heather Kitchens, OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Heather Kitchens, telephone 571-372-6104.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to revise the DFARS to implement sections 221 and 861 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. 115-91).

Section 221 amends 10 U.S.C. 2302(2)(B) to allow for an expanded application of other competitive procedures by replacing the words "basic research" with "science and technology". Competitive procedures are defined in 10 U.S.C. 2302(2) as "...procedures under which the head of an agency enters into a contract pursuant to full and open competition." Changing the words "basic research" to "science and technology" expands the authority to use other competitive procedures for "advanced technology development" and "advanced component development and prototypes" research proposals, in addition to the previously authorized "basic research" and "applied research" proposals. One of the solicitation methods for research and development proposals, a broad agency announcement (BAA), is defined in the Federal Acquisition Regulation (FAR) as "a general announcement of an agency's research interest including criteria for selecting proposals and soliciting the participation of all offerors capable of satisfying the Government's needs." Section 221 permits the use of BAAs for competitive selection of science and technology proposals by authorizing the use of the competitive procedures at 10 U.S.C. 2302(2)(B) that result from a general solicitation and peer or scientific review of such proposals - a key element of the BAA process.

Section 861 amends 10 U.S.C. 2302e to allow for an extended term limit and increased dollar threshold under the contract authority for advanced development of initial or additional prototype units awarded from a competitive selection, as specified in 10 U.S.C. 2302(2)(B). The statutory term limit extends from 12 months to 2 years and the dollar threshold increases from \$20 million to \$100 million in fiscal year 2017 constant dollars (10 U.S.C. 2302e). Section 861 also amends 10 U.S.C. 2302e to repeal the obsolete authority implemented by section 819 of the NDAA for FY 2010 (Pub. L. 111-84), thereby eliminating the expiration date of the authority.

II. Discussion and Analysis

The proposed DFARS changes for the other competitive procedures authorized by section 221 and implemented at 10 U.S.C. 2302(2)(B) are as follows:

- DFARS section 206.102, Use of Competitive Procedures, is added with a statement at paragraph (d)(2) that, for DoD, the competitive selection of science and technology proposals resulting from a broad agency announcement with peer or scientific review, as described in 235.016(a), satisfies the requirement for full and open competition. This DFARS section is added, notwithstanding FAR 6.102(d)(2), which limits other competitive procedures to basic and applied research proposals.

- DFARS 215.371-4(a)(4) is revised to provide an only-one-offer exception for the acquisition of science and technology, as described in DFARS 235.016(a), instead of basic or applied research or development, as specified in FAR 35.016(a).
- DFARS 235.006-71 is added to direct contracting officers who are conducting acquisitions for research and development in accordance with FAR part 35 to DFARS 206.102(d)(2) regarding competitive procedures for science and technology proposals; and
- DFARS section 235.016, Broad Agency Announcement, is revised to provide that broad agency announcements with peer or scientific review may be used for science and technology proposals, including four categories of science and technology proposals and their corresponding budget activity codes.

The proposed changes to DFARS 234.005-1, Competition, for the contract authority for advanced development of initial or additional prototype units, authorized by section 861 and implemented at 10 U.S.C. 2302e, are as follows:

- The term "general solicitation" is replaced with "broad agency announcement."
- The term limit is changed from 12 months to 2 years.

- The dollar threshold is increased from \$20 million to \$100 million in fiscal year 2017 constant dollars.
- The expiration date of September 30, 2019, is deleted.

In summary, this proposed rule expands the application of other competitive procedures to include the competitive selection of science and technology proposals beyond “basic research” proposals. This proposed rule also expands the contract authority for advanced development of initial or additional prototype units. These procedures are internal to the Government with minimal impact to the public.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not propose to create any new provisions or clauses or impact any existing provisions or clauses.

IV. Executive Orders 12866 and 13563

Executive Order (E.O.s) 12866, Regulatory Planning and Review; and E.O. 13563, Improving Regulation and Regulatory Review, direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and

benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not anticipated to be an E.O. 13771 regulatory action, because this rule is not significant under E.O. 12866.

VI. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. This rule impact internal Government procedures by expanding the use of other competitive procedures to include the competitive selection of science and technology proposals and expands the contract authority for advanced development of initial or additional prototype units. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This rule proposes to amend the DFARS to implement sections 221 and 861 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018.

Section 221 expands the definition of "competitive procedures" at 10 U.S.C. 2302(2)(B) by removing the term "basic research" and adding "science and technology" in its place. Section 861 implements a statutory modification to 10 U.S.C. 2302e to extend the term limit and dollar threshold for the contract authority for advanced development of initial or additional prototype units from 12 months to 2 years and from \$20 million to \$100 million in fiscal year 2017 constant dollars (10 U.S.C. 2302e), respectively. The modification also repeals the obsolete authority of section 819 of the NDAA for FY 2010 (Pub. L. 111-84), thereby eliminating the expiration date of September 30, 2019, for the contract authority for advanced development of initial or additional prototype units.

The objective of this rule is to implement sections 221 and 861 to establish broad agency announcements as a competitive procedure that may be used to select science and technology proposals and to expand the term limit and dollar threshold for the contract authority for advanced development of initial or additional prototype units.

In FY 2017, DoD awarded 1,853 contracts for research and development, excluding Small Business Innovation Research (SBIR) and Small Technology Transfer Research (STTR) program requirements. Approximately 53% of those new contract actions were awarded to 1,005 of unique small business and

nontraditional DoD entities. There were 2,858 new contract awards for SBIR and STTR program requirements for DoD.

Approximately 66% of those new contract actions were awarded to 1,891 of unique small business and nontraditional DoD entities.

This proposed rule does not include any new reporting or recordkeeping requirements for small entities.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternative approaches to the proposed rule that would meet the requirements of the applicable statute.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2018-D021), in correspondence.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 206, 215, 234 and 235

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations
System.

Therefore, 48 CFR parts 206, 215, 234, and 235 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 206, 215, 234, and 235 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 206—COMPETITION REQUIREMENTS

2. Subpart 206.1 is added to read as follows:

Subpart 206.1—Full and Open Competition

206.102 Use of competitive procedures.

(d) Other competitive procedures. (2) In lieu of FAR 6.102(d)(2), competitive selection of science and technology proposals resulting from a broad agency announcement with peer or scientific review, as described in 235.016(a) (10 U.S.C. 2302(2)(B)).

PART 215—CONTRACTING BY NEGOTIATION

3. In section 215.371-4, paragraph (a)(4) is revised to read as follows:

215.371-4 Exceptions.

(a) * * *

(4) Acquisitions of science and technology, as specified in 235.016(a); or

* * * * *

PART 234-MAJOR SYSTEM ACQUISITION

4. Section 234.005-1 is amended by-

- a. Removing paragraph (2);
- b. Redesignating paragraph (1) as introductory text;
- c. In the newly redesignated introductory text, removing "general solicitation" and adding "broad agency announcement" in its place;
- d. Redesignating paragraphs (i), (ii), and (iii) as paragraphs (1), (2), and (3), respectively;
- e. In the newly redesignated paragraph (2), removing "12 months" and adding "2 years" in its place; and
- f. Revising the newly redesignated paragraph (3) to read as follows:

234.005-1 Competition.

* * * * *

(3) The dollar value of the work to be performed pursuant to the contract line item or contract option shall not exceed \$100 million in fiscal year 2017 constant dollars. (10 U.S.C. 2302e).

PART 235-RESEARCH AND DEVELOPMENT CONTRACTING

5. Section 235.006-71 is amended by-

- a. Designating the text as paragraph (b); and

b. Adding a new paragraph (a) to read as follows:

235.006-71 Competition.

(a) Use of a broad agency announcement with peer or scientific review for the award of science and technology proposals in accordance with 235.016(a) fulfills the requirement for full and open competition (see 206.102(d)(2)).

* * * * *

6. Section 235.016 is added to read as follows:

235.016 Broad agency announcement.

(a) General. A broad agency announcement with peer or scientific review may be used for the award of science and technology proposals. Science and technology proposals include proposals for the following:

- (i) Basic research (budget activity 6.1).
- (ii) Applied research (budget activity 6.2).
- (iii) Advanced technology development (budget activity 6.3).
- (iv) Advanced component development and prototypes (budget activity 6.4).

[FR Doc. 2018-23677 Filed: 10/30/2018 8:45 am; Publication Date: 10/31/2018]